

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5211 of 1996

cr

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

VIJAYSHANKAR JAYMANGAL JAISWAL

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
Mr.Nigam Shukla, learned Addl. P.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/10/96

ORAL JUDGMENT :

1. The petitioner-detenu herein seeks to challenge the detention order dated 15-4-96 passed against him by the Police Commissioner, Ahmedabad City whereby the petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on the same day i.e. 15-4-96 and

since then the petitioner is under detention at Jamnagar Jail, Jamnagar.

2. This Special Civil Application challenging the detention order was filed in this Court on 18-7-96 and on 19-7-96 Rule returnable for 12-8-96 was issued, but so far neither any reply has been filed on behalf of the respondents nor the detaining authority has filed any affidavit-in-reply.

3. The grounds which were enclosed with the detention order show that the petitioner's field of dealing in country liquor, foreign liquor and beer is Bhilwada, which is under Amraiwadi Police Station of Ahmedabad City and 2 criminal cases under the provisions of the Bombay Prohibition Act were pending investigation with the police against the petitioner when the detention order was passed. The detaining authority has made a passing reference to the unfortunate event of lattha kand, which had happened in past with which the petitioner is not concerned, but the detaining authority has mentioned the consequences of such Lattha Kand i.e. consumption of country liquor. The detaining authority has observed that the petitioner was also engaged in the anti social activities of country liquor and that he was a bootlegger. Besides this, reference has been made to the incident dated 24-3-96 when the petitioner had intercepted the witness and suspecting him to be a police informer gave him a public beating. Crowd had assembled, the petitioner ran after the members of the crowd with naked weapon alongwith his associates. The people became helter skelter and an atmosphere of terror was created and the routine public life was disturbed. With regard to another incident dated 1-4-96 the statement of a witness has been taken into consideration that while the witness was waiting on his vehicle at the road leading to Amraiwadi from Vastral the petitioner and his associates approached this witness and took hold of the vehicle, placed the liquor stock in the vehicle, when the witness declined to take the vehicle at the instance of the petitioner, the petitioner got enraged and dragged out the witness from the vehicle and beaten him, as a result of which the persons passing thereby and the traders had collected. The petitioner alongwith his associates ran after the members of the crowd with open weapon resulting into helter skelter of the people and the routine life of the people was disturbed. The detaining authority then observed that the petitioner had been engaged in public beating of innocent persons and the allegations against the petitioner have been substantiated by 4 witnesses, who have also expressed that they are frightened of the

petitioner and, therefore, their identity be kept secret. The detaining authority has verified and found that the fear of the witnesses is genuine and accordingly provisions of S.9(2) of the Act had been invoked for keeping the identity of these witnesses to be secret. The detaining authority has opined that the petitioner can not be prevented from these anti social activities unless he is detained and other steps with regard to externment may not be adequate. On the aforesaid basis, the detaining authority opined that the petitioner's detention was necessary and accordingly the detention order was passed.

4. The detention order has been challenged on more than one grounds, but the learned counsel has submitted that this Special Civil Application may be disposed of only on the ground that the detention order has been based on the allegations and materials, which can not be said to be relevant to the consideration of public interest and in fact, the order had been passed for a collateral purpose of law and order rather than public order and it is submitted by the learned counsel for the petitioner that at the most it can be said to be a case of law and order and no allegation against the petitioner constitute the case of breach of public order and there was no material before the detaining authority to form the opinion with regard to the breach of the public order.

5. I have considered the submissions made on behalf of both the sides. Only yesterday i.e. on 4-10-96 I have passed an elaborate order with detailed reasons and after taking into consideration the ratio of the various decisions rendered by the Supreme Court and this Court a view has been taken that the allegations of this nature do not constitute a case of breach of public order. For the reasons stated in the detailed order dated 4-10-96 passed in Special Civil Application No.3879/96, which is based on number of decisions rendered on the point and comparing the nature of allegations which were considered by the Supreme Court and this Court and comparing the same with the allegations in the present case, I am fully satisfied that such allegations do not constitute a case of breach of public order nor they could be made the ground for passing the impugned detention order. Such grounds have been held to be not at all germane to the considerations required for breach of public order and I find that the detention order has been passed for a collateral purpose of law and order instead of public order and the detention order passed on the grounds, as aforesaid, can not be sustained in the eye of law. The

submission made on behalf of the petitioner is fully covered by the decision rendered on 4-10-96 by this Court, as stated above and the impugned detention order deserves to be quashed and set aside.

5. Accordingly this Special Civil Application is allowed. The petitioner's continued detention is declared to be illegal and the detention order dated 15-4-96 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.